IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5257 OF 2006

Maharashtra State Road Transport Corporation .... Petitioner
Vs.
Rambhau Laxman Ubale .... Respondent

Shri G.S. Hegde i/b M/s. G.S. Hegde & Associates for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 14, 2006

P.C:

1. Heard. The petitioner challenges the order dated 28-9-2005 passed by the Industrial Court in Revision Application (ULP) No.124 of 1998 whereby the said revision application was dismissed. The same was filed against the judgment and order dated 3-4-1998 passed by the Labour Court in Complaint (ULP) No.173 of 1989. By order on the preliminary point passed on 9-7-1997, the Labour Court had held that the inquiry conducted by the petitioner against the complainant was illegal, mala fide and in utter disregard to the principles of natural justice. The petitioner, therefore, was given opportunity to substantiate the charges levelled against the complainant. However, the petitioner did not adduce any evidence in support of the charges in the said complaint before the Labour Court. Consequently the

Labour Court allowed the complaint while setting aside the order of termination of services of the complainant which was passed by the petitioner on 22-12-1989.

2. The allegation against the complainant was that some used tickets were found with the complainant during the course of checking by the checking squad. The order passed by the Labour Court clearly discloses that the matter was adjourned from time to time to enable the petitioner to lead evidence in support of the allegation against the complainant. However, the petitioner failed to lead any evidence in support of the said allegation. Evidently, the Labour Court arrived at the finding that it was only surmises and conjectures that were made by the checking squad that the complainant was desirous to re-sell the tickets. The said finding has been confirmed by the revisional authority on reconsideration of the materials on record.

3. It is sought to be contended on behalf of the petitioner that the order on the preliminary point was itself not proper and borne out from the records in the sense that the inquiry was held to be not fair and just only on account of non-payment of subsistence allowance, when in fact the subsistence allowance was duly paid to the complainant. Attention is drawn in that regard to the contents of the memo of the revision application.

The said contents of the revision application before the Industrial Court themselves disclose that the subsistence allowance was not paid on the day it ought to have been paid to the employee. In any case, the records disclose that in spite of fair opportunity being given to the petitioner, the petitioner was not able to substantiate the charges which were levelled against the complainant in the course of recording of the evidence before the Labour Court. It was then sought to be argued that if the order on the preliminary point itself is set aside, there would have been no need for the petitioner to establish the charges by leading further evidence before the Labour Court. Though the proposition as such cannot be disputed, fact remains that in the case in hand, in spite of opportunity being granted to the petitioner, it could not lead any evidence in support of the charges. It was sought to be contended that inquiry was conducted and in the course of the inquiry necessary evidence was led and if so there is no explanation as to what prevented the petitioner from placing the very evidence before the Labour Court when the opportunity in that regard was granted to the petitioner.

4. Since the petitioner expects me to exercise my writ jurisdiction, it was necessary for the petitioner to explain in the petition as to what prevented the

petitioner from placing the said evidence, if it was available to be produced. In the course of the inquiry why the same was not produced before the Labour Court in spite of opportunity having been given by the Labour Court to the petitioner to adduce the said evidence in support of the allegations made against them. Suppression of this information itself dis-entitles the petitioner to seek interference in the impugned order in writ jurisdiction. Though the subsequent event in the normal course may not be sufficient to judge the veracity of the order passed by the Court below on the preliminary point, in the peculiar facts and circumstances of the case, same assumes importance and more particularly when the petitioner seeks interference of this Court in writ jurisdiction.

5. Besides, the impugned order by the Industrial Court was passed in September, 2005. The petition has been filed in July, 2006. No explanation has been given for the delay in approaching the Court.

6. It is then sought to be contended that the Labour Court was not justified in granting full back wages. Once it is apparent that the order of termination of the services was absolutely illegal and without any basis, the employee cannot be penalised for the fault of the employer. There is absolutely no evidence on record to

disclose that the period during which the complainant was out of service, he was employed elsewhere or he was gainfully employed in any manner. Being so, and the order of termination being absolutely illegal, I do not find any justification for interference in the order directing the payment of full back wages.

7. Attention was also drawn to the decision of the Apex Court in **U.P.S.R.T.C. v. Mahendra Nath Tiwari & Anr.,** reported in 2005 (7) Supreme To-Day 664. That was a case where the conductor was found driving the bus while the driver acting as conductor without any authority in that regard. It was also established that no ticket was issued to the sole passenger travelling in the bus at the relevant time. On facts, therefore, the decision is clearly distinguishable. In the case in hand, there is absolutely no evidence led by the petitioner in support of the charges which were levelled against the complainant. That was not the case in **U.P.S.R.T.C.** (supra) and hence the decision has no application to the case in hand.

8. For the reasons stated above, therefore, there is no case made out for interference in the impugned order. The petition, therefore, fails and is dismissed.

(R.M.S. Khandeparkar, J.)